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NOMINATION OF F. HENRY HABICHT II

HEARING

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

ON

THE NOMINATION OF F. HENRY HABICHT II TO BE DEPUTY ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

MAY 11, 1989

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NOMINATION OF F. HENRY HABICHT II

THURSDAY, MAY 11, 1989

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the committee) presiding.

Present: Senators Burdick, Moynihan, Baucus, Lieberman, Durenberger, and Humphrey.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. Good morning.

The Committee on Environment and Public Works is meeting today to receive testimony on the nomination of Mr. Hank Habicht to be the Deputy Administrator of the Environmental Protection Agency.

I'd like to welcome Mr. Habicht to this hearing. We look forward to hearing from him today.

The primary responsibility of the EPA Deputy Administrator is to oversee the day-to-day operation of the agency. The Deputy Administrator also assists the Administrator in the formulation of policy. Whereas the Administrator is the chief spokesman for the agency and its policies, the Deputy's job is to make sure that the agency is following those policies.

Mr. Habicht has extensive experience in environmental law. More significantly, from 1983 to 1987 he was Assistant Attorney General at the Land and Natural Resources Division of the Department of Justice. This division handles all Federal Government litigation concerning environment and energy, and land and natural resource matters. Mr. Habicht's experience at Justice should be good background for the task ahead of him at EPA should he be confirmed.

I hope that Mr. Habicht will tell us how he views the roles of the States and the administration and enforcement of environmental laws. The States are partners with the Federal Government in the implementation of many of the environmental laws. I think I can fairly state that members of this committee are very interested in how the nominee to be Deputy Administrator would view this partnership.

Mr. Habicht, this job is very important to the health and safety of millions of Americans. I commend you for your dedication to environment, and your willingness to take on this challenge. If you

are confirmed, I wish you the best of luck and look forward to working with you.

With us this morning is the Senator from Virginia who will make the introduction.

Mr. Habicht, just a statement for the record. Mr. Chafee would have liked to have been here this morning, but he was called away on another matter with the President, and he expresses his concern that he's not here. But he may be back before the hearing is over.

Senator Moynihan?

Senator MOYNIHAN. Good morning, Mr. Chairman. Good morning, Mr. Habicht. Senator Warner, we welcome you and look forward to hearing from you.

Senator BURDICK. Mr. Lieberman, do you have a statement?

OPENING STATEMENT OF HON. JOSEPH I. LIEBERMAN, U.S. SENATOR FROM THE STATE OF CONNECTICUT

Senator LIEBERMAN. I do. Thank you, Senator.

A brief word, just to welcome Mr. Habicht to the committee. I have the pleasure of knowing him, not enough to recuse myself, but enough to feel happy that he's been nominated for this position. When I was attorney general of the State of Connecticut, I got to know Hank during his time as an assistant attorney general here in Washington. We attended many conferences together. I have a lot of respect for him. I think he understands the environment, and he brings the unique perspective of somebody with an enforcement background, which I think is critical for EPA. While we're protecting the environment, all the advocacy that EPA can do, I think it's important to remember that there are laws to be enforced. And the ability to work together with the Department of Justice, I think, will be excellent.

And secondly, I think through his work at Justice, he brings a multi-disciplinary perspective, which is going to be important for EPA as well. I recall that when he was at Justice, Hank represented not only EPA, but all the Federal Trustees, those agencies that protect our natural resources. And that combined perspective, I think, will help to make him an outstanding deputy.

So I appreciate the opportunity to say these words of welcome, and look forward to this hearing. Thank you, Mr. Chairman.

Senator BURDICK. It's a pleasure at this time to call on my colleague, Senator Warner.

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. I thank you, Mr. Chairman, and members of the committee. It's indeed a privilege for me to be here to introduce this distinguished American this morning who has been selected by the President to undertake this important responsibility.

We not only share a common heritage in Virginia, but we also attended the same university, the University of Virginia, although at slightly different times.

As the Chair has very carefully stated this nominee has had an extensive background and I would just simply ask that my state-

ment, which covers basically the same biographical material, be included in the record.

Senator BURDICK. It will be received, without objection.

Senator WARNER. I would like to add, though, most recently the nominee was an advisor to Vice President Bush on environmental and conservation issues during the 1988 Presidential campaign, which speaks, I believe, to the high regard for his capabilities as the Deputy Administrator of this agency, and the confidence in which the President of the United States holds in his abilities.

He has also served as counsel to the Seattle law firm of Perkins & Coie, and was Vice President of William D. Ruckelshaus Associates, Washington, DC.

Mr. Chairman and members of the committee, I have no reservations whatsoever about this distinguished individual undertaking these responsibilities, and I urge the prompt confirmation by this committee and the submission of his name to the Senate as a whole.

I thank the Chair.

[Senator Warner's statement follows:]

STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

My distinguished colleagues, it is a privilege to come before you today to present Hank Habicht, not only because we both live in Virginia and are alumni of the University of Virginia, but because of the extraordinary talents he will bring to the number two position at the United States Environmental Protection Agency.

The national and world environmental challenges that face this important agency today will need to be met by strong leadership at the helm—and Hank Habicht meets that need. He has been involved in a wide range of environmental issues since 1981, at the U.S. Department of Justice, in private law practice, and as a public servant and private counselor.

Hank served in the U.S. Department of Justice from 1981 to 1987 where, for the last four years, he was assistant attorney general. He directed the Land and Natural Resources Division, which handles all Federal Government litigation concerning environmental, energy and land resource management matters. During Hank's tenure at Justice, the number of civil and criminal enforcement prosecutions there more than doubled.

He formed and chaired the National Environmental Enforcement Council, established to promote coordination of Federal and State environmental actions, and was involved in the legislative reauthorization of several important pollution control laws. He previously was deputy assistant attorney general for one year and special assistant to Attorney General William French Smith for two years.

Most recently Hank was an advisor to Vice President Bush on environmental and conservation issues during the 1988 presidential campaign which speaks to the high regard for his capabilties as the deputy administrator of the Environmental Protection Agency.

Hank Habicht has also served as counsel to the Seattle law firm from Perkins Coie, and was vice president of William D. Ruckelshaus Associates, Washington, D.C.

Mr. Chairman, I believe that the experience, respect, and strength of character that belong to Hank Habicht makes him more than qualified to carry out the critical responsibilities as deputy administrator, and I urge the members of this committee to act swiftly on this nomination.

I am pleased to see that Hank Habicht is joined today by the supportive presence of his wife Wendy. Hank and Wendy also have two young daughters, Jennifer and Caroline.

Senator BURDICK. Thank you.

Senator Durenberger.

Senator DURENBERGER. I do not have an opening statement. I have some questions I'd like to propound to the witness when I may.

Senator BURDICK. Senator Humphrey.

Senator HUMPHREY. No statement, thank you.

Senator BURDICK. Mr. Habicht you're next.

STATEMENT OF F. HENRY HABICHT, II, NOMINATED TO BE DEPUTY ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Mr. HABICHT. Thank you very much, Mr. Chairman.

Mr. Chairman, I have a written statement that was submitted and I would like, with your leave, to have that in the record.

Senator BURDICK. That will be received without objection.

Mr. HABICHT. Mr. Chairman and members of the committee. I'd like to thank Senator Lieberman, and particularly thank Senator Warner for those kind introductory remarks. The bond of Charlottesville is a strong one.

I'd also like, Mr. Chairman, to thank, on behalf of both myself and Bill Reilly, the members of the committee for making the time for this hearing. We're very anxious to fill out the team at EPA, and the committee's assistance in this is much appreciated. I also had the chance to meet with several members of the committee, and many members of the staff over the last two weeks, and I'm very grateful for the time we had to spend in those meetings.

I had wanted to introduce my lovely wife, Wendy, and my children, Jennifer and Caroline, but unfortunately one of my daughters took ill suddenly last night and they're not able to be here. But they are great sources of support to me, and I wanted to mention that for the record. I'd also planned to make them available as witnesses, if the committee thought it would be helpful.

Mr. Chairman, members of the committee, I'm very proud to be here, and I'm proud to have been asked to serve by President Bush, and by Bill Reilly. I'd like to share for just a moment a couple of thoughts, and then leave time to respond to whatever questions the committee has.

First I wanted to share a few reasons why I returned to public service after a relatively brief stint in the private sector. The reasons are: first, that I think this is a time of great opportunity in the area of environmental protection. We have a President who sincerely wants to take a leadership role in the environmental field. EPA has an outstanding Administrator, as I think you all know. Bill Reilly is a man whom I admire, a man whom I also like—which is very important, and whose goals I wholeheartedly share.

Second, I also think that the American public is increasingly sensitive to the need for a renewed environmental ethic, and to the priority of environmental issues, among all issues that the country faces.

And finally, I believe that EPA has the opportunity to develop an even more effective working and constructive working relationship with the key policy makers in the environmental field, and particularly the leaders of this committee.

As you noted, Mr. Chairman, the responsibilities of the Deputy Administrator essentially involve managing agency activities. In

my view the main responsibilities are to translate the vision of the President and the Administrator into effective action.

It goes without saying that I'm excited to work with Bill Reilly and to help realize his goals in the areas of both domestic and international environmental protection. From a manager's perspective there are a couple of points that I think are particularly worth noting in considering a candidate for Deputy Administrator.

First, I think above all that management of EPA must ensure that the agency aggressively implements and aggressively enforces the law. Having spent six years at the Justice Department, it's absolutely clear that the responsibility of public trust requires that the Executive Branch first and foremost show an aggressive willingness to enforce the laws as passed by Congress and as embodied in the Constitution and elsewhere.

Secondly, we have an obligation to involve and inform the public about environmental protection issues, something that Bill Reilly is committed to doing. In order to be able to do that, we need a foundation, a reliable and solid foundation of research and data about the character and the quality of the risks we face. That underlying foundation is important for us to be able to communicate with the public and involve the public in these decisions.

Third, EPA and Congress must make environmental protection a society-wide enterprise. Particularly with the nature of the issues we face now, the Federal Government has to reach out and empower the States, interest groups, local communities and individual citizens in the enterprise of environmental protection.

Now, as the Chairman mentioned, I have had substantial experience in dealing with State governments in the enforcement area, which is a priority to me. The State/Federal relationship is called a partnership, but I think even more importantly than that we critically rely on the States. We must avoid duplication, and have an aggressive coordinated enforcement posture across the board.

Finally, it's important to mention that EPA's most precious resources are its human resources. EPA has certainly one of the most, I think across the board the most talented group of people in Government. They're dedicated, motivated, and very well trained. And management must constantly pay priority attention to attracting, to training, and retaining the best possible people in the agency.

In brief, Mr. Chairman, our society, as we all know, has made great progress in this joint enterprise of environmental protection. The public service side of environmental protection is a great privilege and responsibility, one that I'm very excited about, and think is an extraordinarily high calling. The public interest and commitment in this area is stronger than ever, and the challenges are substantial.

If you and your colleagues consent, I pledge to give my absolute best at EPA, and I look forward to working with the Congress, particularly with this committee, as we jointly face the challenges ahead.

Thank you very much, and I'd be pleased to answer any questions you have.

Senator BURDICK. Thank you.

Before we start the questions, Senator Baucus, do you have an opening statement?

Senator BAUCUS. No statement, Mr. Chairman, but I do have questions, which I will ask when my turn comes.

Senator BURDICK. All right.

Mr. Habicht, do you know of any matters which you may not have already disclosed which might place you in any conflict of interest if you are confirmed for this position?

Mr. HABICHT. No, I do not, Mr. Chairman.

Senator BURDICK. Are you prepared at the request of any duly constituted committee of the Congress, to appear in front of it as a witness?

Mr. HABICHT. Yes, I am.

Senator BURDICK. Would you please explain your view of the unitary executive theory as it may apply to EPA enforcement of the environmental laws?

Mr. HABICHT. Yes, Mr. Chairman. The concept of the unitary executive is in essence, and my understanding of the concept is, simply that the President is the accountable person in the Executive Branch, and that the President runs the Executive Branch. This is a theory that dates back to the language of Alexander Hamilton and the analysis of several Attorneys General.

In the context of enforcement this issue came up several years ago as several agencies reviewed what is the best means for enforcing the law between Federal agencies. And in essence, the theory is simply that when there is a dispute between agencies in the Federal Government, at least as a matter of first resort the President should have the opportunity to resolve that dispute before other means of resolution are invoked.

In the context of enforcement that would mean that there would be constitutional concerns with EPA—with one agency going into a Federal court and seeking to have a Federal judge resolve an interagency dispute. I think that in the context of enforcing the law against Federal facilities, which is a critically important priority to the President, to me and to Bill Reilly, the theory does not disable EPA from taking an aggressive role, and from essentially being the authority that would set the standards and call the shots with regard to environmental compliance within the Federal Government.

I would just add that environmental compliance is something to which I have committed most of my career. And strong enforcement and seeking environmental compliance across the board is critical. That includes everyone who is subject to the environmental laws.

Senator BURDICK. Thank you.

We'll now hear from the gentleman from the great State of New York.

Senator MOYNIHAN. Mr. Chairman, the questions that are going to be addressed to our distinguished nominee here are beyond my capacity, as a layman in the field of the law. He went right to the issue of the unitary theory, and if Hamilton was of that view, I tend to be. And I'll leave it there. But I did want to thank Mr. Habicht for his remark that there needs to be an increase, or at least

a continued, reliance on research and data in the environmental field.

I have a few moments with you now, and I don't know that I will ever get another chance when your attention is quite as concentrated as it is in a moment like this. To just offer your personal judgment, your view, which I think is shared by members of this committee, some of them, that we have been conspicuously weak in the area of science and evidence in research and data. Our environmental program has not been science driven. Would you agree with that?

Mr. HABICHT. I would agree that there is a need for developing a more consistent body of basic research to support the environmental programs. It's too often that research is done in the context of promulgating a particular regulation, rather than in developing a fundamental body of information.

Senator MOYNIHAN. A general monitoring.

But, let me take Superfund. You're going to be running the Superfund, right?

Mr. HABICHT. I'll be involved with it, yes.

Senator MOYNIHAN. And does EPA have a single case of a toxic waste site having caused any physical harm to a person?

Mr. HABICHT. I would hesitate to answer that no cases have been found. I'm not sure whether the data would show that.

Senator MOYNIHAN. Well, yes, but it wouldn't be unreasonable to think that if we knew a lot about the trauma, if that's the term associated with toxicity, that this would be kind of common knowledge around the building, wouldn't it?

Mr. HABICHT. I would expect so, yes.

Senator MOYNIHAN. We've spent $6 billion on Superfund, so by now, you'd think we'd know something about what we're doing, wouldn't you?

Mr. HABICHT. I think we do have a handle on much site risk data, although we probably don't know enough.

Senator MOYNIHAN. What do we know?

Mr. HABICHT. In terms of the impacts of waste sites on the public, the risks that are posed by waste sites, we don't know enough. We don't know as much as we——

Senator MOYNIHAN. What do we know? I'm not pressing you as if you're supposed to answer this question, but would you mind going back and giving me a note—I'm very serious—of what you think we know, the institutional knowledge? I mean, what do we know?

Mr. HABICHT. I would be happy to do that.

Senator MOYNIHAN. Most people when they hear that say, ah-ha, you see, that's a polluter. And he wants to see that something is done, et cetera. I will make an opposite case. There's a prejudice of people that you can't do research, and don't follow it. Some say calling for research is an excuse for inaction. I'd like to suggest to you; no, it is the absence of research that is an excuse for inaction. Whenever you went in to see the Director of the OMB to talk about acid rain in the 1980's, do you know what he said to you? He said do you think it's a bad idea? You say, yes. He said, prove it. And that was the end of the conversation. We put half a billion dollars into NAPAP, and so we have some evidence. Could I ask you,

would you send me a note about what the institution, EPA, knows about the harmful effects to human beings of toxic waste sites?

Mr. HABICHT. Senator, I'll be happy to do that.

And if I might just add one point, as the Senator is aware EPA in 1987 prepared a report called Unfinished Business, which was a first cut at an analysis that would compare the magnitude of environmental risks that face our society. And I think most people would agree that the information, the data and the research that underlie that was not as substantial as we would have liked, and I think we're all committed to expanding on that research and getting better information so we can, jointly with the Congress, set priorities as we approach environmental risks.

Senator MOYNIHAN. I thank you, but I leave you with a thought, that report was rather calm. They said, hmmm, interesting, we don't seem to know anything about what we're doing. Hmmm.

Thank you.

Senator BURDICK. Senator Lieberman?

Senator LIEBERMAN. Thank you, Mr. Chairman. If I may, I'd like to return to the unitary executive theory. I do want to congratulate you, first, on your brilliance in citing Hamilton. That was a direct and effective appeal to a great New Yorker, on behalf of another great New Yorker.

I know that there is some who are concerned about your appointment on the question of the unitary executive theory, because of your presence at the Department of Justice during the time the theory was around, and the concern that that means that you will be unwilling to have EPA take action against other Federal agencies that may be harming the environment or violating environmental laws. Could you address yourself just a little bit more to your personal feeling now about the role of EPA, what latitude does EPA have, for instance, to issue administrative orders as against other Federal agencies?

Mr. HABICHT. Certainly, Senator. Let me say just as a matter of historical context, that I think the Federal Government as a whole has come a long way in the area of sensitivity toward the obligations of Federal agencies. I would say five to ten years ago there were a number of people in agencies, including the defense agencies, who—usually for sincere reasons—didn't pay much attention to the environmental laws. They had a national security mission and were focused on that.

When I was at Justice we were in the process of moving these agencies, moving the Federal Government as a whole, toward a recognition that environmental compliance is a priority, that the Federal Government had to set an example, and that it had to move quickly to get organized. And while I haven't had a chance to study the precise situation in detail, that I don't think you'll find many, if any, managers in any of these Federal agencies who don't now believe that the environment is a priority and must be a key part of their agency mission. There have been many agreements, enforceable agreements, that have been reached, and a lot of analysis. There's now a budget planning process in place. Secretary Watkins, for example, at the Department of Energy is devoting an enormous amount of his time to getting on top of this issue.

That's all by way of saying that there has been a evolution throughout the Federal Government. When I was at Justice, we were in the position of reconciling the positions of many agencies and moving forward. My position now, as Deputy Administrator of EPA both in light of my position, my thinking on the subject, and the state of play in the Federal Government on this issue, is that while progress has been made the President has a major commitment to have the Federal agencies meet or exceed the standards being imposed on the private sector, and I see my role as being an aggressive advocate for compliance across the board, and finding the best and most effective ways to achieve compliance. If that involves a situation analogous to the situation under the Superfund law, where EPA would issue orders that would set out what's required to comply with the environmental laws, I would aggressively promote that approach as well.

Senator LIEBERMAN. I appreciate that clarification. Would you take it a step further? Can you imagine a case where EPA might take another Federal agency to Federal court for failure to comply with one of those administrative orders?

Mr. HABICHT. I can't say I find the situation inconceivable. When I testified on this subject in 1987, I talked in terms of first resorts and last resorts, and I think the American people have to appreciate that the Federal Government will do what's necessary to make sure that there's environmental compliance. I would hope and expect that a worst case situation wouldn't arise. If you have orders that are enforceable and schedules, and a budget process that makes sure the money is available, I would hope and expect that compliance will happen. But I don't think it's appropriate to rule anything out in the abstract.

Senator LIEBERMAN. I appreciate that. I think that's a good strong statement, and I hope that it allays the concerns that anybody has about your nomination based on the unitary executive theory.

My time is almost up, so let me just ask one more brief question, which is in the discussion we've heard coming from the Administration about the Clean Air Act, which is a focus of this committee's concentration during this session. We've heard some talk about market incentives being used, and I wonder if you could address yourself, particularly as somebody who comes from an enforcement background, to what you understand to be the notion of market incentives, and do you see a role for them in environmental protection and clean air particularly, as against more traditional enforcement?

Mr. HABICHT. Well, Senator, market incentives, as you know, is a term that encompasses a broad range of ideas and concepts. My sense is, like Bill Reilly's, that given the nature of the issues that we're facing across the board in pollution control, we need to look at all reasonable tools, including market based incentives, to move the private sector into compliance, and to encourage waste minimization and pollution prevention. I don't see them as necessarily inconsistent with a strong enforcement posture, because as I see it when you have market incentives there is still a standard that companies have to meet, whether it's an allocation of rights, which is one concept, or some other means. And in any event, if those

limits are exceeded, there's a violation just as there's a violation of a command and control standard. So enforcement still has a role to play, and always, in my view, will have to have role to play. You always need that strong enforcement sanction in the background in order to make these programs work.

Senator LIEBERMAN. Thank you.

Thank you, Mr. Chairman.

Senator BURDICK. The Senator from the great State of Minnesota, Mr. Durenberger.

Senator DURENBERGER. Thank you very much, Mr. Chairman.

Mr. Habicht, congratulations, and thank you very much for all of your efforts so far in your public service, and also thank you for taking on the task which you have so very well described in your opening statement.

I'm going to ask two questions if I may, and by way of background, I've served now on this committee since 1983, four of those years as Chair of one of its subcommittees, which was then Environmental Oversight and Toxic Substances. I was impressed by the accuracy of your statement. We are now all serving with a President who wants to address what you characterize as the public's perception and belief as a very important priority issue. You even spoke of the renewal of the public ethic for the environment, which I think you very accurately sense, and that isn't just because we're getting publicity for global warming. I think it's because every once in a while the public has an opportunity to be tested on how much it's willing to do in order to have. And this is the one area in which they have consistently, and again recently, refortified the ethic, that I don't want somebody to take from me, without telling me, my health, and so forth.

So, I think you're in the right place at the right time, and I'd like to ask you two questions that have been a deep concern to me as a former subcommittee chair, and now as a ranking member of this committee, that reflect those six years of experience with the previous administration. When you talk about an Administration which will aggressively implement and enforce the laws passed by Congress, these questions will sort of relate to that. They'll be general, but important, I think, to the way this committee operates.

The agency is currently behind on a lot of important regulatory projects. In the Superfund program, the National Contingency Plan implementing the 1986 SARA amendments has not been finalized. That was due in early 1988. In the RCRA program there's no corrective action rule, no new standards for hazardous waste incineration, no new toxicity tests, and no decision on important listing questions. Under the Safe Drinking Water Act, the agency has only just proposed standards that were to have been final last June. And at the time those standards were proposed, EPA also announced the next batch would be running even later. The Disinfection Rule is languishing. There's no rule for lead. These are just some of the issues that I've been involved with since I got here.

Under the Clean Water Act, the sludge rules that were to be final in August of 1987 weren't proposed until February of this year. The Storm Water Rules will be a year late. Revisions in the Industrial Guidelines are running behind, and the toxic hot spots are not being identified on schedule. I guess I could go on, but let

me ask you if it is not correct to assume that your responsibility at the agency will be to manage this regulatory calendar, or the agency that I have generally addressed, is that correct?

Mr. HABICHT. That will be a big part of my job, yes, sir.

Senator DURENBERGER. Okay.

Then I'm wondering if you plan to prepare an agency-wide update on where things stand with all of these major actions, a kind of a rundown that lists all the projects required by the law, or a court order, and a projected completion date for each task? Do you intend to pull together sort of a snapshot of where things are at at some point in time?

Mr. HABICHT. I will talk to the people in the agency. I think it's important for us to have a good inventory of where we stand. There are systems in place in the agency that should allow us to get a good feel for where these regulations stand.

Senator DURENBERGER. Would it be possible for you to provide this committee, by a date such as July 1st, with a list of all the projects mandated by law, and their deadlines, and the expected completion dates for each item? I happen to know that such a list exists at the agency, I've got a copy of it. So the question is—I'd like to see your hand on it, or your own fingerprints on it since you're going to be the manager. Would it be possible to give us that sort of list, by say July 1st of this year?

Mr. HABICHT. If it is possible, I will undertake to do that.

Senator DURENBERGER. If it is not possible by July 1st, is there a date by which you believe it would be possible?

Mr. HABICHT. I will undertake to respond, to let you know if it's not possible, give you a good explanation for what we can give you and how quickly we can give it to you. Still being oriented to the agency, I don't know the scope of exactly what's possible and what isn't. But the important point is that the agency has people working extraordinarily hard at getting these regulations out. When deadlines aren't met, that affects the agency's credibility and it's important to Bill Reilly and to me to be sure we're doing everything we can do and to explain to the public and to you what we're doing and what the constraints and the realities are of this very difficult task.

Senator DURENBERGER. I know that statement is true, and everybody is working very hard to get them out, and if that's true, then somewhere there's got to be an inventory from some manager as to what's going on. So I will presume that you will find it within your capabilities in the agency and I'll look forward to seeing that list.

I have another question. I'll wait until my second turn, though, Mr. Chairman.

Senator BURDICK. Mr. Baucus.

Senator BAUCUS. Thank you.

I apologize for my temporary absence when Senator Lieberman was asking you some questions concerning Federal facilities. As I understand it, you stated in response to Senator Lieberman's questions that you do favor enforcement by the EPA. For example, administrative actions, or potentially even litigation with probably administrative actions, against other Federal agencies to force them to comply with, say RCRA, is that correct?

Mr. HABICHT. Yes. I think the precise viewpoint that I hold is that we in the Federal Government have to bring—to do what's necessary to bring the Federal agencies into compliance with the law, to work with those agencies and to push them where necessary. It's a big job, and if that involves EPA aggressively moving through an administrative enforcement process, subject only to the President's ability to referee that if the President were to want to step in, then I would support that kind of action.

Senator BAUCUS. So you are stating your view, or perhaps—are you speaking for Administrator Reilly, in making that statement?

Mr. HABICHT. We have talked about the subject generally. We haven't had a chance to talk about it in detail, so I would leave him the room to articulate his views in his own way. But I think he and I have discussed the need for us to move forward, and the President's commitment to——

Senator BAUCUS. I take it that you are not speaking for the Administration in making that statement, in presenting your personal view, that that is not an Administration position, but that is your personal position?

Mr. HABICHT. This is my personal position, and it's simply because I haven't had a chance to spend time with the new team in the Administration to talk through these issues. So I can't say whether that's the Administration's position.

Senator BAUCUS. So it's your personal position, if not necessarily that of the Administrator, although it may be, but certainly not of the Administration. What assurance do we have that if in fact an agency is emitting toxic and radioactive wastes, that the EPA will bring requisite administrative civil action, or whatever's necessary to assure compliance?

Mr. HABICHT. Well, I think I can commit that the Administration will, in very short order, formulate and communicate to the Congress a strategy, a comprehensive strategy for bringing Federal facilities into compliance, which will involve, as you know, a range of activities. And that will be the assurance when it takes the form of a formal Administration policy.

Senator BAUCUS. When might we see that?

Mr. HABICHT. I'd hesitate—as you know, I'm very new here and I would hesitate to commit a specific time, but I get the feeling from initial conversations around the Administration, and from what the President and others have said, and certainly from the commitment of the new team, including people like Secretary Watkins, that this would be forthcoming in fairly short order.

Senator BAUCUS. I move to another matter. What about State actions to enforce Federal compliance? As you know, various Federal courts are split on this issue, and split on the degree to which, according to those courts, the United States Government under RCRA has in fact waived sovereign immunity. What's your personal view? Should we warrant unambiguously States in section 6001 of RCRA that the Federal Government has waived sovereign immunity so that States can bring actions to force a Federal facility's compliance under RCRA?

Mr. HABICHT. The only context in which I've looked at that question in any detail was back in the Justice Department when we were looking at the sovereign immunity issue. I think that the

question of waiving sovereign immunity is distinctly within the prerogative of Congress. It's one of the fundamental prerogatives of Congress.

Senator BAUCUS. That's correct. My time's running out, so I'm asking your advice. Should we, or should we not, state that more clearly, waiving that immunity more clearly? I think we did in the last Act, three Federal courts had a contrary view, two courts agree. I'm asking you, should we clear that up to more affirmatively declare that the sovereign immunity is waived?

Mr. HABICHT. Let me say, when there's a split in the courts, I think it's appropriate for Congress to address it and we will, we in the Administration, will work to help provide the information you'll need to make that judgment.

Senator BAUCUS. You don't have a view then?

Mr. HABICHT. Well, I'll just say, Senator, my view is that I'm a strong supporter of the States playing a major role in the area of environmental protection, and their having the tools that they need is important. On the other side of the equation is the fact that you're talking about exposing--you're talking about impacts on Federal agencies and the Federal Treasury, and those are questions the facts and the implications of which need to be addressed. But I think it is an appropriate issue, and one that I'm sure we'll work with you to address.

Senator BAUCUS. Thank you, Mr. Chairman. I see my time is up.

Senator BURDICK. Mr. Lieberman.

Senator LIEBERMAN. I have no further questions, Mr. Chairman.

Senator BURDICK. The gentleman from Minnesota.

Senator DURENBERGER. Thank you, Mr. Chairman. Mr. Habicht. The second question is kind of like the first one, but deals more with something I think you can understand from your past experience. And again, this one is going to relate to the budget process, which I'm going to assume is also part of your management responsibility.

Quite often the reason that legally mandated deadlines are missed is because the agency says it just doesn't have the resources to meet the deadline. It doesn't have the people or the dollars for contractors necessary to do the job. That was the excuse the Drinking Water Office used when they were asked why the latest batch of standards were late. And that may well be the case. What I'm trying to deal with here is the degree of certainty with which we're going to get back to aggressively implementing and enforcing laws passed by Congress.

At a minimum, it has always seemed to me, that EPA has some kind of a responsibility to the President and the Congress to ask for the dollars that it believes are necessary to carry out these legal mandates. Whether it agrees with the mandates or not, and this goes back to the question Senator Moynihan was asking, when you assess the nature of a problem, you're the expert, you've got all of the contracting data. Everybody looks to you for the answers to the questions, what's wrong, how serious is it, and how much is it going to remedy it. So every year we go through a process called the budget process around this place, and it's got three steps to it. The first is the EPA prepares a budget, that in the past has never had sufficient resources to accomplish everything that Congress

told them to do if it was going to aggressively implement and enforce the laws passed by Congress.

Then the second step is we have a meeting in this committee, and we call it a budget hearing, and we ask, all the time, whether there are enough dollars to meet every deadline. The agency always says, yes, there's enough dollars to meet the deadline. To illustrate that, if there's any question about it, I can produce word-for-word exchanges that I have had, and other members of this committee have had with the previous Administrator, which when asked the question, do you have enough resources in your budget, he says, yes I have enough in my budget.

The third step comes a month or two after the hearing when EPA misses some deadline and somebody in the agency says, well, we just don't have enough dollars to do the jobs, which is where I started with all this.

What this seems to reflect, certainly to me and I would guess to this environmentally conscious public out there that we all talked about, it reflects a cynicism about the whole process, which in the end becomes self-defeating. It plays a role in developing hard feelings, Democrats versus Republicans, or the Congress against the White House, or something like that. Or it gets to be, sometimes, personalities. So you get hard feelings. And I've come to the conclusion that EPA has to make one of two choices here. Either it should ask the President for the dollars that are necessary to carry out the law, that is to legally meet the mandates and the deadlines, or it should be prepared to recommend to the Congress that the deadlines be extended. One or the other. Again, trying to find honesty here rather than cynicism.

I, for one, would not insist that we spend every dollar that's necessary to meet the due date on every single, sometimes silly, study that comes out of the Congress of the United States. But what I look for is honesty on the part of the Administrator to say--he doesn't have to call it silly—if he would just say that's one of those studies that, as we go through a priority of things in America today, that's something that we believe could be extended a year, then we can use our resources somewhere else a lot better.

But when we ask what won't be accomplished that is legally required, we ought to get an honest answer. I guess that's the bottom line. So, what I'd like to see each year as a part of the budget process, is a letter, or a proposed bill from the EPA, or something, which notes the deadlines are going to be missed, the reasons for missing the deadlines, and a proposed alternative completion date. That doesn't sound too complicated, and some people here may not agree with me, but at least trying to overcome the cynicism in the previous process, this is, I thought, perhaps a relatively simple alternative that you might be willing to consider.

I'd just like your reaction to that. The alternative, of course, is to ask the President actually for what you need, and then to come down here and tell us that this is what we've asked the President for. Can you give me a general reaction from your past experiences?

Mr. HABICHT. Well, certainly, Senator. One of my past experiences was defending the agency in court when it had missed a deadline and parties were seeking to put the agency under essen-

tially a judicial receivership to make sure regulation got out. And I didn't like that, and I like even less the prospect of the public believing that the agency is cynical or cavalier about enforcing or implementing the law. And we all are concerned about such perceptions. And most of all, the people in the agency are. So, we have to do whatever is necessary to convince you and the public that we care, we're going to do the best job we can, and we're open.

I strongly support the project of developing information and developing communications with the Congress; the purpose of that process is for us to be able to develop information, make judgments, come to you and say, here's our sense of what the real environmental priorities are, here's what the realities of the budget are, because we all face a difficult budget situation and we all have a part in dealing with that. At the same time, public confidence is the most important asset that we have outside the agency, as I said human resources are inside the agency, and that we have to communicate and not make it appear as though we're pulling a fast one. I don't think that's the intention. And I don't have any evidence to believe that when the agency does its best to submit a budget and keep it within reasonable bounds, that it doesn't believe that the job can be done.

But we do need to have realistic assessments, and when we don't think we can do it all, we need to openly talk about that. And maybe in some cases we must come to you and say, you know, we really think we need to take another look at the priorities and the duties here, and the mandatory duties and come up with an approach we can all agree on.

Senator DURENBERGER. Mr. Chairman, I raise this issue, if I might just a second, in the aftermath of the experience that our colleagues on the Appropriations Committee had with the global warming data and so forth. And also because of the feeling that I've had just talking to my colleagues in the last couple of days as a result of that. I think there's disappointment on the part of a lot of Republicans, as well as Democrats, that that particular event said it's business as usual. You know, it's this cynical conflict that nobody wants to talk about that's going on again. And every time that happens somebody says, well, all George does is sit down at the White House and raise puppies, and has people over to the house, and he doesn't really mean what he says.

I really think it is important, because I believe what you've said about the President, and the Administrator. I think we all agree with that about the Administrator, that if you make this effort to be more honest at that end, then we have to be honest in our reaction. We can't have people sitting up here saying, well, we told you in 1984 to do this, that, or the other thing. We ought to say, hey, this is 1989 and maybe in the light of 1989 we ought to look at it differently. So I think if you could expect us not to jump down your throat when you come up short, but to compliment you for admitting that you came up short, or that you believe we came up short in our judgment three years or five years ago, and you demonstrate why.

I think this whole system of policy making and policy implementing and enforcing would work a lot better, and I would guess

from your background and your reputation and from the Administrator's, that is something we can count on.

Mr. HABICHT. Yes. And I would just add, Senator, that's absolutely correct. And I would add that the commitment really does start at the top. I am convinced that the President—he has already spent a lot of his personal time on these issues, encouraging Bill Reilly, and encouraging the Administration to develop a leadership role, whether it's on the Clean Air Act, or international initiatives. And I'm confident that we can help restore, continue to build the public confidence that Bill Ruckelshaus and Lee Thomas have been building up at the agency.

Senator DURENBERGER. Thank you, Mr. Chairman.

Senator BURDICK. Do you have another question?

Senator DURENBERGER. No, Mr. Chairman.

Senator BURDICK. If there are no further questions by a member of the committee, we will proceed to close.

The hearing record will remain open for five days for any Senator wishing to make an insertion. And with that the meeting will be closed.

[Whereupon, at 10:55 a.m., the committee was adjourned, to reconvene at the call of the chair.]

[Mr. Habicht's statement and responses to a committee questionnaire follow:]

STATEMENT BY

F. HENRY HABICHT II

EPA DEPUTY ADMINISTRATOR-DESIGNATE

BEFORE THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

MAY 11, 1989

MR. CHAIRMAN, DISTINGUISHED MEMBERS OF THIS COMMITTEE. IT IS MY GREAT HONOR TO APPEAR BEFORE YOU TODAY AS THE PRESIDENT'S AND WILLIAM K. REILLY'S NOMINEE FOR DEPUTY ADMINISTRATOR OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

WHEN I WAS ASKED TO SERVE AS DEPUTY ADMINISTRATOR, BILL REILLY AND I DISCUSSED AT LENGTH BOTH HIS AND THE PRESIDENT'S STRONG COMMITMENT TO ENVIRONMENTAL QUALITY AND THEIR KEEN INTEREST IN PROTECTING PUBLIC HEALTH AND THE ENVIRONMENT, IN THE U.S. AND THROUGHOUT THE WORLD. I FULLY SHARE IN THEIR COMMITMENT AND BELIEVE IT IS AN HONOR TO BE ASKED TO BE PART OF THE NEW ADMINISTRATION'S ENVIRONMENTAL TEAM. THIS IS A TIME OF GREAT OPPORTUNITY IN THE AREA OF ENVIRONMENTAL PROTECTION AND I AM ENTHUSIASTIC AND EXCITED BY THE JOB THAT LIES AHEAD IF I AM CONFIRMED. I LEARNED IN MY FOUR YEARS AS AN ASSISTANT ATTORNEY GENERAL, AND THE FEDERAL GOVERNMENT'S CHIEF ENVIRONMENTAL ENFORCER IN THE COURTS, THAT THE FIELD OF ENVIRONMENTAL PROTECTION IS IMMENSELY REWARDING. ENVIRONMENTAL PROTECTION IS AN AREA WHERE THE COMMITMENT OF THE AMERICAN PEOPLE IS CLEAR -- WHERE OUR SOCIETY HAS MADE GREAT STRIDES, BUT ALSO WHERE MANY CHALLENGES REMAIN.

BILL REILLY, BOTH IN HIS APPEARANCE BEFORE YOU AND SINCE HIS CONFIRMATION, HAS OUTLINED HIS GOALS AS ADMINISTRATOR AND HAS SET OUT SEVERAL THEMES WHICH WILL ALLOW EPA TO BE AS EFFECTIVE AS POSSIBLE. I WHOLEHEARTEDLY SHARE HIS GOALS, INCLUDING AGGRESSIVE ENFORCEMENT, PREVENTING POLLUTION AND PROTECTING SENSITIVE ECOSYSTEMS AND RESOURCES SHARED BY ALL INHABITANTS OF THE GLOBE. AND LIKE BILL REILLY, I PLEDGE, THAT IF CONFIRMED, I WILL USE ALL THAT IS WITHIN MY POWER TO SEE TO IT THAT THESE GOALS ARE MET.

WE ARE, MR. CHAIRMAN, IN A DYNAMIC PERIOD AS EPA CONFRONTS A NEW GENERATION OF NATIONAL AND INTERNATIONAL ENVIRONMENTAL ISSUES. AS THESE ISSUES COME MORE SHARPLY INTO FOCUS, SO DO THE CHALLENGES FACING EPA MANAGEMENT. IN APPROACHING THESE CHALLENGES, YOU HAVE MY COMMITMENT THAT I WILL WORK CLOSELY WITH BILL REILLY TO ASSURE THAT THE AGENCY MAINTAINS THE HIGHEST STANDARDS OF EFFECTIVENESS AND EFFICIENCY.

FIRST AND FOREMOST, THIS MEANS THAT THE AGENCY MUST CONSTANTLY DEMONSTRATE THE WILL AND COMMITMENT FAITHFULLY TO IMPLEMENT AND ENFORCE THE LAWS PASSED BY THIS CONGRESS. I BELIEVED THIS TO BE A BEDROCK RESPONSIBILITY OF THE EXECUTIVE BRANCH DURING MY TENURE AT THE DEPARTMENT OF JUSTICE AND PLEDGE TO MAKE IT A GUIDING PRINCIPLE AT EPA. MOREOVER, AS THE ISSUES RELATING TO ENVIRONMENTAL PROTECTION BECOME INCREASINGLY COMPLEX, MAINTAINING AND STRENGTHENING A SOLID FOUNDATION OF PUBLIC TRUST AND CREDIBILITY IS CRUCIAL.

SECOND, IN VIEW OF THE SOPHISTICATED NATURE OF THE ISSUES WE FACE, EPA MUST MEET THE DIFFICULT CHALLENGE OF DEVELOPING AND COMMUNICATING THE BEST DATA AND TECHNICAL INFORMATION POSSIBLE ABOUT ENVIRONMENTAL RISKS AND ENVIRONMENTAL QUALITY. THE AGENCY MUST BE GUIDED BY THE MOST RELIABLE AND BEST SCIENCE AVAILABLE. OUR SOCIETY DEMANDS AN OPEN AND WELL-INFORMED PUBLIC DISCUSSION OF THE MEANS AND ENDS OF ENVIRONMENTAL PROTECTION.

FURTHER, WE MUST APPLY OUR RESOURCES WITHIN THE STRICTURES OF THE LAW TO ENSURE THAT WE ATTACK AND REDUCE THE MOST SERIOUS RISKS FIRST AND USE OUR RESOURCES AS EFFECTIVELY AS POSSIBLE. WE MUST CONSULT MORE CLOSELY THAN EVER WITH THE CONGRESS AND THE PUBLIC TO GUARANTEE THAT WE SET PRIORITIES EFFECTIVELY AND THAT WE TRACK PROGRESS ACCURATELY.

THE AGENCY HAS A THOROUGHLY PROFESSIONAL AND DEDICATED STAFF ALREADY ADDRESSING MANY OF THESE TASKS. THE HUMAN RESOURCES AT EPA ARE THE AGENCY'S GREATEST RESOURCE. AND IF CONFIRMED, MY HIGHEST PRIORITIES WILL INCLUDE ENSURING THAT EPA CONTINUES TO ATTRACT, TRAIN AND RETAIN THE VERY BEST.

AS BILL REILLY HAS EXPLAINED TO THIS COMMITTEE, HOWEVER, THE JOB OF ENVIRONMENTAL PROTECTION IS NOT EPA'S ALONE. THE MISSION MUST BE SHARED WITH THE STATES AND LOCAL COMMUNITIES, AS WELL AS ALL ELEMENTS OF THE PRIVATE SECTOR. IT IS ONLY BY BUILDING PRODUCTIVE RELATIONSHIPS BEYOND THE FEDERAL GOVERNMENT, WITH OUR PARTNERS IN THE STATES, WITH INDUSTRY, WITH THE NON-PROFIT COMMUNITY, AND WITH EACH MEMBER OF THE PUBLIC THAT WE CAN HOPE TO MEET TODAY'S ENVIRONMENTAL CHALLENGES.

IN THIS CONNECTION, MR. CHAIRMAN, I BELIEVE THAT SUCCESS IN THIS IMPORTANT ENTERPRISE DEPENDS UPON REGULAR, CONSTRUCTIVE COMMUNICATIONS BETWEEN OUR BRANCHES OF GOVERNMENT. I LOOK FORWARD TO WORKING WITH YOU AND THE COMMITTEE AS TOGETHER WE SEEK TO FIND CREATIVE SOLUTIONS TO SOME OF THE MOST VEXING PROBLEMS FACING THIS NATION AND THE PLANET, SUCH AS ACID RAIN, SOLID WASTE AND THE NEED FOR INTERNATIONAL COOPERATION TO PROTECT THE GLOBAL

ENVIRONMENT. THESE, ALONG WITH MANY OTHER ISSUES SUCH AS HAZARDOUS WASTE MINIMIZATION, GROUNDWATER CONTAMINATION, AND PROTECTING KEY ECOLOGICAL RESOURCES INCLUDING OUR OCEANS, COASTAL AREAS AND WETLANDS, PRESENT A TREMENDOUS CHALLENGE IN THE YEARS AHEAD.

IN CLOSING, ALLOW ME TO REAFFIRM MY COMMITMENT TO ENVIRONMENTAL PROTECTION AND POLLUTION PREVENTION. I SPENT FOUR YEARS AT THE DEPARTMENT OF JUSTICE WORKING TOWARD THOSE GOALS AND I HOPE, MR. CHAIRMAN, WITH THE APPROVAL OF THIS COMMITTEE AND YOUR COLLEAGUES IN THE SENATE, THAT I MAY DO SO ONCE AGAIN, AS PART OF PRESIDENT BUSH'S AND BILL REILLY'S NEW ADMINISTRATION AT EPA.

MR. CHAIRMAN, I WILL DO MY BEST TO ANSWER ANY QUESTIONS YOU AND OTHER MEMBERS OF THE COMMITTEE MAY HAVE.

THANK YOU.

UNITED STATES SENATE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: HABICHT II (Last) F (First) HENRY (Middle)

Position to which nominated: Deputy Administrator, EPA Date of Nomination:

Date of birth: 10 April 1953 (Day) (Month) (Year) Place of birth: Oak Park, Illinois USA

Marital status: Married Full name of spouse: Wendy Wilson Habicht

Name and ages of children:

Jennifer Alane Habicht	February 12, 1982 (7)
Caroline Lesner Habicht	April 2, 1985 (4)

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Univ. of VA Law School	1975-1978	J.D.	1978
Princeton University	1971-1975	A.B.	1975
Lyons Township High School	1967-1971	Diploma	1971

Employment record: List all positions held since college, including the title and description of job, name of employer, location, and dates. If you were terminated involuntarily from any position(s), please note the circumstances.

Associate Attorney - Kirkland and Ellis
655 15th Street, N.W., Washington, DC -- 6/78 - 2/81

Special Assistant to the Attorney General
Department of Justice
10th and Constitution Avenue, NW, Washington, DC -- 2/81 - 11/82

Deputy Assistant and then Assistant Attorney General
Department of Justice - Lands Division
10th and Constitution Avenue, NW, Washington, DC -- 11/82 - 7/87

Employment record—Continued

Counsel and Vice President
Perkins Coie and William D. Ruckelshaus Associates
1110 Vermont Avenue, NW, Washington, DC -- 7/87 - 3/89

3/89 - Present
Special Assistant to the Administrator
Environmental Protection Agency
401 M Street, SW, Washington, DC

Honors and awards

List significant scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Edmund Randolph Award - 1985 (U.S. Department of Justice Award)

Who's Who in America - since 1985

High Honors from Woodrow Wilson School, Princeton University - 1975

National Merit Scholarship Winner - 1971

Outstanding Young Men of America - 1979

DillamFellow in Legal Writing (University of Virginia) - 1977

Memberships

List significant memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Environmental Law Institute	Director, Exec Comm.	1987-89
American Bar Association	Natural Resource Committee Chairman	1988-89
Chesapeake Bay Foundation ~~Legal Advisory Committee~~	Member	1989 (briefly)
Bar of United States Supreme Ct.	Member	1983-Present
District of Columbia Bar	Member	1978-Present

State fully your qualifications to serve in the position to which you have been named.

In this time of great opportunity for progress in environmental protection in the United States, I believe that I offer broad experience and a personal commitment to the public service side of the environmental protection field. I have spent the majority of my professional career in public service, and virtually all of that public career has been devoted to environmental protection. During my tenure as Assistant Attorney General at the Department of Justice -- thanks to the staff of EPA and the Land and Natural Resources Division -- the federal civil and criminal environmental enforcement staff grew to record proportions as did the numbers of cases prosecuted and the clean up and financial relief obtained by the federal government. Among other advancements, we also developed a new section in the Land and Natural Resources Division devoted solely to criminal prosecutions. Above all, however, I enjoy working with and supporting the career professionals in the federal, state and local environmental protection agencies, and have an extremely strong interest in helping to make our environmental laws and regulations work at all levels of government, ensuring protection of the public and ensuring maximum public confidence in the people , the science and the regulatory output of EPA.

Future employment relationships

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, completely.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No plans

3. Has anybody made a commitment to you for a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

I have no plans to leave before (at least) 1993.

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

(c) If you have previously held any Schedule C or other appointive position in the Executive branch, irrespective of whether the position required Congressional confirmation, please state the circumstances of your departure and its timing.

I served in the U.S. Department of Justice from 1981-1987. I resigned as Assistant Attorney General at that time solely because ~~after 6 years, my family and I believed it was time to pursue private~~ sector employment.

Financial Statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

I may be entitled to a small distribution of income earned prior to my departure from Ruckelshaus Associates. Accounting has not yet been completed but amount should not exceed $50,000 and is likely to be smaller.

3. Are any assets pledged? (Add schedule).

No, other than home mortgage ($135,000) and car loan ($11,000).

4. Are you currently a party to any legal action?

NO

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain the circumstances.

YES

[illegible] Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

NO

Potential conflicts of interest

1. Describe any financial or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

Small stockholdings would present the only apparent possible conflict. After consultation with EPA Office of General Counsel, I will either sell stock appearing on Form 278 presenting potential conflict, or recuse myself from party matters involving any such firms.

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

I am not aware of any such transaction or relationship.

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

I am committed to sever any relationship or divest any stockholdings which would even create the appearance of a conflict of interest.

Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

I am seeking and will continue to seek the advice of Gerald Yamada, the EPA Ethics Officer, to avoid actual or apparent conflicts of interest.

Political affiliation and activities

List all memberships and offices held in, or financial contributions (in excess of $1,000), and services rendered to any political party or election committee during the last 10 years.

I am a registered Republican, but have held no office nor made significant financial contributions. I provided some limited volunteer environmental policy advice to the campaign of President Bush in late 1988. I also provided pro bono service to President-Elect Reagan's transition group for the Department of Justice in the fall of 1980.

Published writings

List the titles, publishers and dates of any books, articles, or reports you have written. (Please list first any publications and/or speeches that involve environmental or related matters.)

I have lectured and spoken numerous times on the subject of environmental enforcement, regulation and compliance. Copies of significant speeches and Congressional testimony have been supplied to Committee staff. The following is a listing of significant published writings:

--Chapter on Environmental Enforcement (contributor) E.L.I., Handbook on Environmental Law (1988)

--Encouraging settlements under Superfund. (Superfund: a Game of Chance) - Natural Resources & Environment (1985)

-- Settling a Case with the Land and Natural Resources Division (Dealing with Agencies) - Natural Resources & Environment (1985)

-- The Expanding Role of Natural Resource Damage Claims under Superfund Virginia Journal of Natural Resources Law (1987)

--Responses to Justice Antonin Scalia. (Retninking Tort and Environmental Liability Laws: Needs and Objectives of the Late 20th Century and Beyond) Houston Law Review (1987)

-- Superfund: Toward Greater Certainty
Natural Resources Law Newsletter (1986)
-- Implementing Section 404: the View from the Justice Department.
[Clean Water Act] - Environmental Law Reporter (1986)
-- Releases and Risk-Sharing - Finding a Proper Balance
Environmental Forum (1986)
-- "Federal Criminal Environmental Liability: How to Stay on the Civil Side"
Environmental Law Reporter (1987)

Additional Matters

1 If there is any additional information which you believe may be pertinent to the Members of the Committee in reaching their decisions, you may include that here.

Based upon a concern raised sometime in early 1989, the Public Integrity Section of DOJ's Criminal Division initiated a preliminary investigation of me for possible violations of 18USC Sec. 207(c). This is apparently the standard response of the Department to allegations concerning persons covered by the Ethics in Government Act. DOJ determined that there had been no violation of law, and the matter was officially closed. Specifically, DOJ's Public Integrity Section looked at the issue of whether or not an invitation to speak at a public informational conference extended by me to, among numerous other speakers, officials at my former Department within

(continued on attached page)

2 Do you agree to appear before all Congressional Committees which seek your testimony?

YES

3 Having completed this form, are there any additional questions which you believe the Committee should ask of future nominees?

AFFIDAVIT

_____) ss. being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete

_____

Subscribed and sworn before me this _____ day of _____, 19

_____
Notary Public

PAGE 7 (continued)

Additional Matters: 1. (continued)

12 months of my departure, constituted a prohibited communication under 18USC Sec. 207(c). DOJ found that the statute was not violated, and has closed the matter.